

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

CITY OF MAPLE HEIGHTS, OHIO,  
individually and on behalf of all others similarly  
situated,

Plaintiff,

v.

NETFLIX, INC., and HULU, LLC,

Defendants.

Case No. 1:20-CV-01872

Hon. James S. Gwin

Magistrate Judge Thomas M. Parker

**PLAINTIFF CITY OF MAPLE HEIGHTS, OHIO’S MOTION FOR LEAVE  
TO FILE A SUR-REPLY *INSTANTER* TO DEFENDANT NETFLIX, INC.’S  
REPLY IN SUPPORT OF ITS MOTION TO DEEM THE ALLEGATIONS  
SET FORTH IN ITS COUNTERCLAIM ADMITTED**

Plaintiff City of Maple Heights, Ohio, individually and on behalf of all others similarly situated (“Plaintiff”), pursuant to this Court’s inherent authority, respectfully moves the Court for leave to file a sur-reply to Defendant Netflix, Inc.’s (“Netflix”) reply in support of its motion to deem the allegations in its Counterclaim admitted. *See* Proposed Sur-Reply (attached hereto as **Ex. A.**)

Plaintiff should be granted leave to file a brief sur-reply because Netflix raises a new argument for the first time in its reply brief. “Although the Federal Rules of Civil Procedure and the Local Rules do not provide for sur-replies, district courts have discretion to permit sur-replies in ‘appropriate circumstances.’” *Maatuk v. Emerson Electric, Inc.*, No. 1:16-CV-03023, 2019 WL 582461, at \*1 (N.D. Ohio Feb. 13, 2019) (Parker, J.). Such circumstances arise “[w]hen new submissions and/or arguments are included in a reply brief, and a nonmovant’s ability to respond to the new evidence has been vitiated.” *Id.*

Here, Netflix argues in its reply brief that Federal Rule 16(b)(4)'s standard applies to Plaintiff's request for leave to file an answer *instanter*. (ECF No. 43 at 3.) This argument was not addressed in Plaintiff's brief and could not be reasonably anticipated because, as set forth in Plaintiff's proposed sur-reply, Rule 16 clearly does not apply to the circumstances here. Rather, Netflix is attempting to have this Court to apply a "heightened" standard so that it can seize on an inadvertent misunderstanding by Plaintiff to avoid adjudication of its meritless Counterclaim. Plaintiff should be permitted to file a sur-reply to address Netflix's argument so that the Court has the benefit of having the issue fully briefed before adjudicating the merits of the motion. Accordingly, Plaintiff's motion for leave to file a sur-reply should be granted.

Dated: January 18, 2021

Respectfully submitted,

/s/ Justin J. Hawal

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this case has assigned to the Standard Track (*see* ECF 32 at 1) and this motion complies with the page limitations for a Standard Track case under Local Rule 7.1(f).

/s/ Justin J. Hawal

Justin J. Hawal (0092294)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically using the Court's CM/ECF service, which will send notification of such filing to all counsel of record on this 18th day of January, 2021.

/s/ Justin J. Hawal

Justin J. Hawal (0092294)